In The High Court of Uttaranchal at Nainital

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b)

Description of case

W.P. No. 46 (S/B) of 2003 decided on 05-04-2004.

Deepak Kumar Vs State of Uttaranchal & others.

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 05/4/2004. Initials of Judge

In the High Court of Uttaranchal at Nainital.

Writ Petition No. 46 (S/B) of 2003

Deepak Kumar S/o Shri Padam Singh Negi,
R/o village Siran, Patwari Circle Gauchar,
Tehsil Karanprayag, District Chamoli ---Petitioner.

Vs.

1- State of Uttaranchal,
2- Director General, Medical, Health and
Family Welfar, Uttaranchal, Dehradun,
3- Chief Medical Officer,
Chamoli Gopeshwar -------Respondents.

Sri R.P.Nautiyal, learned counsel for the petitioner.
Sri Bhupendra Singh, learned Standing Counsel for respondents.
Date of Judgment: 5-4-2004

ORAL JUDGMENT **(Per: Hon'ble Irshad Hussain, J.**

This writ petition has been filed under article 226 of the Constitution of India with a prayer to issue a writ, order or direction in the nature of certiorari calling for the records and quashing the impugned order dated 20-1-2003 (Annexure-4 to the writ petition) passed by the respondent no.1.

2- Petitioner's mother Smt. Mangala Negi was working as A.N.M. in Primary Health Center, Tharali, District Chamoli. She expired on 13-6-2000 in harness. Petitioner sought compassionate appointment and by order dated 19-9-2002 (Annexure-1 to the writ petition) passed by respondent no.2 he was appointed as Lower Division Clerk under the respondent no.3. On 27-9-2002 petitioner joined his services and submitted joining report (Annexure-4 to the writ petition). However by order dated 20-1-2003 (Annexure-4 to the writ petition) passed by respondent no.2 the appointment of the petitioner was cancelled on the ground that Sri Padam Singh Negi the father of the petitioner, has been employed as Assistant Teacher (LT. Grade) in Government Inter College, Alkapuri, Chamoli although the father of the petitioner affirmed on 5-9-2002 that neither he himself nor any of the family member was

employed in any government or semi-government job or institution and thereby made false claim to get the compassionate appointment.

3- The petitioner alleged that the impugned order has been passed without giving him any opportunity of hearing or show cause in contravention of the principle of natural justice and the order being arbitrary and illegal deserve to be quashed.

4- In counter affidavit the case set up by the respondents is that the father of the petitioner was posted as Assistant Teacher (LT. Grade) in Government Inter College when Smt. Mangala Negi died and he is still in the same service without any break and therefore under the Dying in Harness Rules, 1974 the petitioner is not entitled to be appointed in a government service. It is further averred that the petitioner and his father deliberately concealed the said fact and the petitioner obtained the service by making a false representation, and therefore, his services were terminated. The order of termination is thus just and proper and it was within the jurisdiction of the respondent no.1 to pass the said order of the termination of the service of the petitioner. Copies of the affidavit of the petitioner and his father have been annexed as Annexures C.A-2 and C.A.-3 respectively to the counter affidavit. Annexure- C.A.-4 is the certified copy issued by D.I.O.S. Chamoli on 31-10-2002 informing that Sri Padam Singh Negi is working as Assistant Teacher (LT. Grade) in Government Inter College, Alkapuri, District Chamoli.

5- The petitioner filed rejoinder affidavit wherein it is averred that his father is living with his second wife named as Smt. Manju Negi and the petitioner was fully dependant upon his deceased mother Smt. Mangala Negi and that his father was not maintaining any relationship with his mother and was living separately for the last 15 years. Annexure-1 to the rejoinder affidavit is the copy of the nomination for death-cum-retirement and gratuity of the mother of the petitioner and Annexure-2 to the rejoinder affidavit is the certificate issued by Gram Pradhan, Gram Sabha Siran to the effect that Smt. Manju Negi is the second wife of Padam Singh Negi as has been entered in the family register.

6- It is not in dispute that the petitioner was given appointment per order dated 19-9-2002 on compassionate ground under the provisions of

the Utter Pradesh Recruitment of Dependents of Government Servants Dying In Harness Rules, 1974. Rule – 2(c) define term "family" as under:-

> **" 2(c) "family" shall include the following relations of the deceased Government servant:**
>
> **(i) Wife or husband:**
>
> **(ii) Sons;**
>
> **(iii) Unmarried and widowed daughters."**

7- Further Rule-5 of the said Rules which is relevant read as under:-

> **"5. Recruitment of a member of the family of the deceased. –**
>
> **In case a Government servant dies in harness after the commencement of these rules, on member of his family who is not already employed under the Central Government or a state Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purpose, be given a suitable employment in Government service which is not within the purview of the state Public service Commission on relaxation of the normal recruitment rules, provided such member fulfils the educational qualification prescribed for the post and is also otherwise qualified for Government service. Such employment should be given without delay and, as far as possible, in the same department in which the deceased Government servant was employed prior to his death."**

8- Referring to the above provisions learned counsel for the petitioner submitted that the petitioner being the son of the deceased government employee was entitled to seek compassionate appointment under the rules showing himself to be unemployed and that even if the father of the petitioner was already employed in government service as a teacher the same shall not disentitle the petitioenr to seek benefit of the provisions of the Dying in Harness Rules. On the other hand learned Standing Counsel argued that mere non mention in the relevant Rule-5 of the Dying in Harness Rules that if any member of the family as defined under the rules is already employed in government service another member of the family will no be entitled to seek compassionate appointment would not made such other member of the family to avail benefit of the provisions of the Dying in Harness Rules. The reason according to learned Standing Counsel is that main object behind giving

compassionate appointment or employment is to provide immediate financial help to the family of the deceased employee and when another member of the family is already fruitfully employed in the government service question of providing immediate financial help to the family of the deceased employee does not arise and another member of the family of the deceased employee can not avail the benefit of the rules. Considering the main object the submission of the learned Standing Counsel prevail and the Rule-5 of the Dying in Harness rules reproduced above cannot be interpreted in the manner as canvassed on behalf of the petitioner. In the affidavit of petitioner (Annexure C.A.-2) and affidavit of Sri Padm Singh Negi the father of the petitioenr (Annexure C.A.3) the averments that none of the family members of the deceased employee was employed in government job was false and it was so made to seek compassionate appointment by availing the benefit of the said rules by suppression of fact and misrepresentation. As stated above the petitioner has not denied that his father is employed as Assistant Teacher in Government College and therefore the petitioenr also being the member of the family of the decease employee was not entitled to seek compassionate appointment.

9- In the rejoinder affidavit the case now set up by the petitioner is that his father was living separately from his mother for the last 15 years and his father had taken a second wife. Under Hindu Law legally no recognition to any such second marriage of the father of the petitioner in the life time of the wife can be given and therefore the claim wet up by the petitioner do not deserve to be given any consideration at all. The petitioner was mentioned as nominee in the death-cum-retirement, gratuity documents by the deceased employee but this will not be taken to entitle the petitioner to take benefit of the rules for compassionate appointment. The certificate of Gram Pradhan that another lady is the wife of Sri Padam Singh Negi, the father of the petitioner, also carry no evidentiary value in view of the above observation that legally the father of the petitioner could not have entered into second marriage in the life time of his wife, the deceased employee Smt. Mangala Negi. In the totality of the circumstances of the case it was within the jurisdiction of the respondent authority to cancel the appointment of the petitioner

because in giving the compassionate appointment to the petitioner he was influenced by the fraud and misrepresentation made by the petitioner and his father as referred above. The case now set up by the petitioner can not salvage the damage sustained by the petitioner on account of his fraudulent conduct and legally the propriety and legality of the impugned order of cancellation of the appointment can not be considered in the backdrop of the case now wet up by the petitioner, which otherwise also has no legal merit.

10- It was lastly argued by the learned counsel for the petitioner that the impugned order is arbitrary and illegal as being against the principle of natural justice in view of no show cause notice or opportunity having been given to the petitioner before taking the decision and passing the order. It is well settled that any appointment made by practicing fraud or misrepresentation can be cancelled without giving any opportunity of hearing and such an action in the peculiar circumstance of the case can not be taken as against the principle of natural justice In other words if it is prima facie proved that the person is usurper of public office and has been removed by the competent authority in violation of principle of natural justice, he can not be rehabilitated or permitted to function and perform duties of such office because permitting of such a person to perform duties of such office would negate the rule of law prevalent and as established by constitutional provisions.

11- Lastly it need to be impressed that the impugned order of cancellation of the appointment of the petitioner was passed by the competent authority on consideration of the material fact of misrepresentation and fraud and therefore the same does not suffer from any error of jurisdiction. This apart, the law has now been well settled by the Apex court I the case of **Umesh Kumar Nagpal Vs. State of Haryana (1994) A.I.R. SCW 2305** wherein it has been categorically held that the compassionate appointment is to be given to enable the family of the deceased government employee to face the immediate and sudden financial crisis and to avoid the family falling into destitution. As stated above in the instant case such circumstances were not prevalent in view of the father of the petitioner already employed in government job

as Assistant Teacher (LT.) and therefore by no reasoning the impugned order of cancellation of the appoint of the petitioner can be said to be unjust and illegal. The same being passed by the competent authority in exercise of his jurisdiction, the petition for cancellation of the same lack merit and is liable to be dismissed.

12- The petition is hereby dismissed. No order as to costs.

(Irshad Hussain, J.)

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